

# Instructions for Information Technology Model Contracts

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## Background

The Information Services Board (ISB) has the authority to develop policies and standards governing the acquisition of information technology (IT) resources. It also has the authority to acquire IT resources and to delegate that acquisition authority to individual agencies. Agencies undertaking IT acquisitions must comply with the ISB *Information Technology Investment Policy* (<http://www.dis.wa.gov/portfolio/200P.doc>). This policy establishes the required approvals and oversight for IT acquisitions. Agencies undertaking IT acquisitions should also be familiar with the ISB *Information Technology Investment Standards* (<http://www.dis.wa.gov/portfolio/201S.doc>). The model contracts provided in Appendix D of the Information Technology Investment Standards comply with the requirements of the ISB *Information Technology Investment Policy*.

For personal services acquisitions, the Office of Financial Management (OFM) contracting requirements must be followed in addition to ISB requirements. Information about OFM requirements may be found at <http://www.ofm.wa.gov/contracts.htm>.

## Purpose

Appendix D of the Information Technology Investment Standards provides model IT contracts for equipment, software, purchased services, and personal services. Agencies will often acquire a combination of equipment, software, and services under one contract. In those instances, the model contract that addresses the major purpose of the acquisition should be used with integration of additional provisions from the other pertinent model contracts.

## Contracting Process

Every IT acquisition requires a contract. The contract may be a purchase order for a simple one-time purchase, or it may be the result of complex negotiations regarding ongoing relations with the vendor. A contract formalizes the intent and agreement of the parties and must accurately document all terms and conditions. An effective contract is one that is both legally and technically sufficient. Legal sufficiency ensures that the contract is enforceable in court and contains language required by the Office of the Attorney General. Technical sufficiency ensures that the contract expectations are complete and understandable.

A well-written contract is important to the entire contracting process. If a contract is written clearly, the vendor is more likely to perform the work correctly and the agency is more likely to monitor and audit effectively. The most creative service concept or generous dollar allocation can end in failure when memorialized in a poorly written contract.

For simple acquisitions (e.g., low volume or off the shelf) or small dollar acquisitions that do not involve continuing payments or ongoing relationships with the vendor, an agency may, in lieu of using these model contracts, use the agency's own purchase order that has been approved by the agency Assistant Attorney General and is consistent with the ISB *Information Technology Investment Policy*. Agencies conducting competitive acquisitions with a cost estimated at \$100,000 or above are required to include in the solicitation document (e.g., RFP or RFQ) a draft contract. This contract will be the basis for negotiating the final contract.

If negotiating with a sole source vendor or if no sample contract was included in the solicitation document, a model contract from this Appendix must be used to open contract discussions.

An agency may find itself in a position of starting from a vendor contract. Vendor contracts do not necessarily provide adequate protection for the state but they may contain sections that are satisfactory for a portion of the final contract. If an agency starts from a vendor contract, the vendor contract should be attached to the draft developed from the model contract(s). Strike out or modify any sections in the vendor contract that are inappropriate and have the vendor and the signing authority in your agency initial the changes. As with all contracts, review and approval as to form by the agency Assistant Attorney General are necessary before the contract is signed.

## How to Use These Model Contracts

Explanation boxes (with shaded gray backgrounds) found at the beginning of a section contain a brief description of the section and comments on the section's use. These boxes need to be deleted before attaching a draft contract to a solicitation document or otherwise sending a contract to a vendor. Items that are *[italicized, bracketed, and in red]* should be filled in with the requested information, if pertinent, or deleted and the formatting returned to normal. If a section (e.g., Liquidated Damages) or an attachment

(e.g., Schedule C, if the vendor is not a minority or women's business enterprise (MWBE)) is removed from the contract, search the remainder of the contract for any references to that section or attachment and delete/reword those references as applicable.

There are two types of sections, required and optional. Required sections are mandatory in content, which means the contract must cover the section's subject but need not use the exact language of the model. A table of required sections for each type of contract is included in this Appendix. Required sections are identified both in the table of contents and in the body of the model contract, next to the section heading. Optional sections, which are all the sections not identified as required, should be included as good business practice. In developing a contract, optional sections should be selected to meet that acquisition's needs.

Not every model contract section will be required in every contract, nor will these model contracts sections satisfy every contract need. Contract requirements should be selected from the model contracts plus other sources, then tailored to meet specific functional and operational needs, i.e., scope of work to be performed or products to be purchased/licensed, and the protections necessary to that respective contract's purpose.

When using these models to draft a contract, agencies should first read the entire applicable model contract(s) to identify required and applicable optional sections. A single contract may include equipment purchase, licensed software, and purchased services and will be a combination of those three model contracts. Note that the subject matter of required terms must be included in every contract, except where a purchase order will suffice.

Once the required and optional sections are selected, it will be necessary to ensure accuracy and consistency by changing the language as appropriate and adding any additional sections necessary to complete the contract. Agencies should then construct a draft of the contract, including any referenced schedules, exhibits, etc.

Agencies are then ready to negotiate the contract, if necessary. Negotiations should eliminate any ambiguities in the vendor's proposal and clarify contract terms and conditions. During negotiations, agencies should strive to secure the most favorable terms and conditions for the state. An attempt to acquire an unfair advantage or to make unreasonable demands of the vendor should be avoided.

When negotiations are completed, agencies should seek Assistant Attorney General review and approval as to form on two originals of the contract. It is good business practice to obtain the vendor's signature on the contract first. The agency should then sign the contract and give one original to the vendor and retain the other.

## Table of Required Sections

The table on the following pages summarizes the sections for the model contracts. All **required** terms are shaded and indicated by an "**R**," followed by the section number where the term appears in the ISB-approved model contract for that type of contract. Terms that appear in the model contract as recommended, but **optional**, are indicated by an "**O**," followed by the section number where the term appears in the ISB-approved model for that type of contract. Terms **not included** in the ISB-approved model for that type of contract are indicated by "**NI**."

Some sections shown as optional in the chart may become required under certain conditions. Where applicable, those conditions are noted immediately after the contract section title in the model contract.

## IT Contracts - Sections Summary Table

R = Required Term  
O = Optional, but Recommended Term  
NI = Not Included in that model

CONTRACT SECTION TITLE	Equipment	Software	Purchased Services	Personal Services
Parties	R	R	R	R
Recitals	O	O	O	O
<b>CONTRACT TERM</b>				
Definition of Terms	O - Sec. 1	O - Sec. 1	O - Sec. 1	O - Sec. 1
Term	R - Sec. 2	R - Sec. 2	R - Sec. 2	R - Sec. 2
Survivorship	R - Sec. 3	R - Sec. 3	R - Sec. 3	R - Sec. 3
<b>PRICING, INVOICE AND PAYMENT</b>				
Pricing	R - Sec. 4	R - Sec. 4	R - Sec. 4	R - Sec. 4
Advance Payment Prohibited	R - Sec. 5	R - Sec. 5	R - Sec. 5	R - Sec. 5
Taxes	O - Sec. 6	O - Sec. 6	O - Sec. 6	O - Sec. 6
Invoice and Payment	R - Sec. 7	R - Sec. 7	R - Sec. 7	R - Sec. 7
Overpayments to Vendor	O - Sec. 8	O - Sec. 8	O - Sec. 8	O - Sec. 8
<b>VENDOR'S RESPONSIBILITIES and SOFTWARE LICENSE</b>				
Title to Equipment	R - Sec. 9	NI	NI	NI
License Grant	R - Sec. 25	R - Sec. 9	NI	NI
Software Ownership	R - Sec. 26	R - Sec. 10	NI	NI
Shipping and Risk of Loss	R - Sec. 10	O - Sec. 17	NI	NI
Equipment Compatibility/Specifications/Configurations	O - Sec. 11	NI	NI	NI
Source Code Escrow	NI	O - Sec. 11	NI	NI
Delivery	R - Sec. 12	O - Sec. 21	NI	NI
Site Security	O - Sec. 13	O - Sec. 22	O - Sec. 12	O - Sec. 13
Installation and Set-up	O - Sec. 14	NI	NI	NI
Standard of Performance and Acceptance	O - Sec. 15	O - Sec. 24	NI	NI
Equipment Warranty	O - Sec. 16	NI	NI	NI
Equipment Maintenance	O - Sec. 17	NI	NI	NI
Equipment and Maintenance Documentation	O - Sec. 18	NI	NI	NI
Spare Parts for Equipment	O - Sec. 19	NI	NI	NI
Vendor Commitments, Warranties and Representations	R - Sec. 20	R - Sec. 28	R - Sec. 13	R - Sec. 14
Compliance with Standards (Equipment)	O - Sec. 21	NI	NI	NI
Training	O - Sec. 22	O - Sec. 29	NI	NI
Minority and Women's Business Enterprise (MWBE) Participation	O - Sec. 23	O - Sec. 30	O - Sec. 14	O - Sec. 15
Protection of Purchaser's Confidential Information	R - Sec. 24	R - Sec. 31	R - Sec. 15	R - Sec. 16

<b>CONTRACT SECTION TITLE</b>	<b>Equipment</b>	<b>Software</b>	<b>Purchased Services</b>	<b>Personal Services</b>
Purchased/Personal Services and Statement of Work	NI	NI	R - Sec. 9	R - Sec. 10
Commencement of Work	NI	NI	R - Sec. 10	R - Sec. 11 (as applicable)
Software Warranty	NI	O - Sec. 25	NI	NI
Installation (Software)	NI	O - Sec. 23	NI	NI
Software Upgrades and Enhancements	O - Sec. 34	O - Sec. 26	NI	NI
Software Maintenance and Support Services	O - Sec. 35	O - Sec. 27	NI	NI
Ownership/Rights in Data	R - Sec. 27	R - Sec. 12	R - Sec. 11	R - Sec. 11
Access to Data	NI	NI	NI	R - Sec. 11
Software Specifications	O - Sec. 28	O - Sec. 13	NI	NI
Compliance with Standards (Software License)	O - Sec. 29	O - Sec. 14	NI	NI
Date Warranty	R - Sec. 30	R - Sec. 15	NI	NI
Physical Media Warranty	O - Sec. 31	O - Sec. 16	NI	NI
No Surreptitious Code Warranty	R - Sec. 32	R - Sec. 17	NI	NI
Reauthorization Code Required	O - Sec. 33	O - Sec. 18	NI	NI
Software Documentation	O - Sec. 36	O - Sec. 19	NI	NI
<b>CONTRACT ADMINISTRATION</b>				
Legal Notices	O - Sec. 37	O - Sec. 32	O - Sec. 16	O - Sec. 16
Section Headings, Incorporated Documents and Order of Precedence	R - Sec. 40	R - Sec. 35	R - Sec. 19	R - Sec. 20
Entire Agreement	R - Sec. 41	R - Sec. 36	R - Sec. 20	R - Sec. 20
Authority for Modifications and Amendments	O - Sec. 42	O - Sec. 37	O - Sec. 21	O - Sec. 21
Purchaser <i>[Project or Business]</i> Manager	O - Sec. 39	O - Sec. 34	O - Sec. 18	O - Sec. 18
Vendor Account Manager	O - Sec. 38	O - Sec. 33	O - Sec. 17	O - Sec. 17
Independent Status of Vendor	R - Sec. 43	R - Sec. 38	R - Sec. 22	R - Sec. 22
Governing Law	R - Sec. 44	R - Sec. 39	R - Sec. 23	R - Sec. 23
Subcontractors	O - Sec. 45	O - Sec. 40	O - Sec. 24	O - Sec. 24
Assignment	O - Sec. 46	O - Sec. 41	O - Sec. 25	O - Sec. 25
Publicity	R - Sec. 47	R - Sec. 42	R - Sec. 26	R - Sec. 26
Review of Vendor's Records	R - Sec. 48	R - Sec. 43	R - Sec. 27	R - Sec. 27
Right of Inspection	NI	NI	NI	O - Sec. 28
<b>GENERAL PROVISIONS</b>				
Patent and Copyright Indemnification	R - Sec. 49	R - Sec. 44	R - Sec. 28	R - Sec. 28
Save Harmless	R - Sec. 50	R - Sec. 45	R - Sec. 29	R - Sec. 29
Insurance	O - Sec. 51	O - Sec. 46	O - Sec. 30	O - Sec. 30
Industrial Insurance Coverage	R - Sec. 52	R - Sec. 47	R - Sec. 31	R - Sec. 31
Licensing Standards	O - Sec. 53	O - Sec. 48	O - Sec. 32	O - Sec. 32
OSHA/WISHA	O - Sec. 54	O - Sec. 49	NI	NI
UCC Applicability	O - Sec. 55	O - Sec. 50	NI	NI
Antitrust Violations	O - Sec. 56	O - Sec. 51	O - Sec. 33	O - Sec. 33

<b>CONTRACT SECTION TITLE</b>	<b>Equipment</b>	<b>Software</b>	<b>Purchased Services</b>	<b>Personal Services</b>
Compliance with Civil Rights Laws	R - Sec. 57	R - Sec. 52	R - Sec. 34	R - Sec. 3
Severability	R - Sec. 58	R - Sec. 53	R - Sec. 35	R - Sec. 3
Waiver	R - Sec. 59	R - Sec. 54	R - Sec. 36	R - Sec. 3
Treatment of Assets	O - Sec. 60	O - Sec. 55	O - Sec. 37	O - Sec. 3
Vendor's Proprietary Information	R - Sec. 61	R - Sec. 56	R - Sec. 38	R - Sec. 4
<b>DISPUTES AND REMEDIES</b>				
Disputes	R - Sec. 62	R - Sec. 57	R - Sec. 39	R - Sec. 4
Attorneys' Fees and Costs	O - Sec. 63	O - Sec. 58	O - Sec. 40	O - Sec. 4
Non-exclusive Remedies	O - Sec. 64	O - Sec. 59	O - Sec. 41	O - Sec. 4
Liquidated Damages	O - Sec. 65	O - Sec. 60	O - Sec. 42	O - Sec. 4
Failure to Perform	O - Sec. 66	O - Sec. 61	O - Sec. 43	O - Sec. 4
Limitation of Liability	R - Sec. 67	R - Sec. 62	R - Sec. 44	R - Sec. 4
<b>CONTRACT TERMINATION</b>				
Termination for Default	R - Sec. 68	R - Sec. 63	R - Sec. 45	R - Sec. 4
Termination for Convenience	R - Sec. 69	R - Sec. 64	R - Sec. 46	R - Sec. 4
Termination for Withdrawal of Authority	O - Sec. 70	O - Sec. 65	O - Sec. 47	O - Sec. 4
Termination for Non-Allocation of Funds	O - Sec. 71	O - Sec. 66	O - Sec. 48	O - Sec. 5
Termination for Conflict of Interest	O - Sec. 72	O - Sec. 67	O - Sec. 49	O - Sec. 5
Termination Procedure	O - Sec. 73	O - Sec. 68	O - Sec. 50	O - Sec. 5
Covenant Against Contingent Fees	O - Sec. 74	O - Sec. 69	O - Sec. 51	O - Sec. 5
<b>CONTRACT EXECUTION</b>				
Authority to Bind	O - Sec. 75	O - Sec. 70	O - Sec. 52	O - Sec. 5
Counterparts	O - Sec. 76	O - Sec. 71	O - Sec. 53	O - Sec. 5
<b>SCHEDULES</b>				
SCHEDULE "X": Authorized Product and Price List	O - Sch. A	O - Sch. A	O - Sch. A	O - Sch. A
SCHEDULE "X": Problem Escalation Procedures and Disaster Recovery Plan	O - Sch. B	NI	NI	NI
SCHEDULE "X": Statement of Work <i>[template]</i>	NI	NI	O - Sch. B	O - Sch. B
SCHEDULE "X": Escrow Contract	NI	O - Sch. B	NI	NI
SCHEDULE "X": MWBE Certification <i>[if applicable]</i>	O - Sch. C	O - Sch. C	O - Sch. C	O - Sch. C
<b>EXHIBITS</b>				
EXHIBIT A: <i>[Purchaser]</i> Request For <i>[Proposal/ Quotation/Qualifications and Quotation ]</i>	O	O	O	O
EXHIBIT B: Vendor's Response	O	O	O	O